

# City of Roseville

Office of the City Attorney

88-316  
Phone 781-0325  
311 Vernon Street  
Roseville, California  
95678

September 26, 1988

Margarita Altamirano  
Counsel, Legal Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, California 95804

Re: Request for Written Advice  
Your no. 88-316

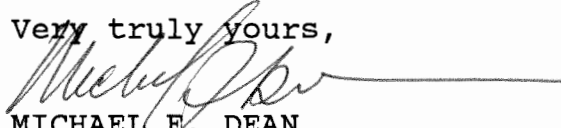
Dear Ms Altamirano:

By letter dated August 10, 1988, we requested written advice pursuant to Government Code section 83114(b). Our request was acknowledged by your office on August 15, 1988.

I recognize that particularly because of the passage of Proposition 73 the FPPC has been under a great deal of sudden pressure. I also know that you have left several telephone messages stating that you had not forgotten our request and were working on it. However, our commissions are commencing hearings and our request for advice is therefore becoming urgent. Please do what you can to expedite it so that our commissioners and councilmembers will have definitive guidance.

Thank you for your cooperation.

Very truly yours,

  
MICHAEL F. DEAN  
City Attorney

MFD/mlc

cc: Mayor and Members of the City Council  
Commissioner Kinder  
City Manager  
Planning Director



# City of Roseville

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Re: Request for Written Advice

Dear Ms Altamirano:

Thank you for the opinions (Boehm, A-87-255; Lauterer, A-85-124; and Damesyn, A-84-111) which you supplied in answer to my recent telephone inquiry. However, I am still left with some degree of uncertainty as to what types of decisions can be participated in by our local officials. As a result, please consider this a formal request for written advice pursuant to Government Code section 83114(b).

As you are aware from our prior request for advice contained in my letter to you dated March 17, 1988, the City of Roseville is a charter city, governed by a five member City Council. The council in turn appoints a seven member Planning Commission (see generally Government Code sections 65100, 65101.) Among other things, both the Planning Commission and City Council conduct hearings on General Plan Amendments, Specific Plan adoptions, rezonings, subdivision maps and use permits.

A majority of the members of the City Council own stock in the Roseville Telephone Company. Several members of the Planning Commission also own such stock, and in addition, one member of the Planning Commission is employed by the company as its Marketing and Planning Manager. In order to provide you with the background you requested regarding Roseville Telephone Company, enclosed please find a copy of its 1987 Annual Report.

I would appreciate the Legal Division's advice as to under what circumstances City officials either owning stock or employed by Roseville Telephone Company have a conflict of interest in the following cases: Adoption of a specific plan area (see our prior letter for detailed facts as to both the Northcentral and Northwest Roseville Specific Plan Areas, neither of which has as yet been adopted); rezonings of areas either from nonurban to

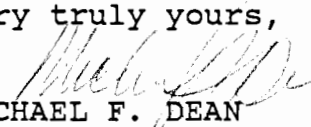
urban uses or from urban to more intensive urban uses such that use of telephone services or equipment may be expected (including either residential, commercial or business/professional uses); subdivision maps permitting construction of individual dwelling units; and use permits permitting construction of commercial or business/professional projects which may be expected to utilize telephone communication services or equipment.

It is our understanding from the opinions which you have provided to us that, despite the fact that on its face ownership of stock or employment by Roseville Telephone Company may result in a conflict of interest, because Roseville Telephone Company is regulated by the California Public Utilities Commission it is possible that this is not the case. Your specific advice on this point would be appreciated.

Finally, assuming that a conflict of interest does occur in a particular circumstance, where a majority of the Council has the same conflict of interest, how is the City to proceed to review a particular application? We understand that the "Rule of Necessity" does not necessarily apply to conflicts generated under the Political Reform Act. Should those members owning the least stock be permitted to act, or should the City Council designate a quorum of its members by lot?

If there are any questions, or if any clarification is needed please do not hesitate to inquire.

Very truly yours,



MICHAEL F. DEAN  
City Attorney

MFD/mlc

Attachment

cc: Mayor and Members of the City Council  
Commissioner Kinder  
City Manager  
Planning Director



# California Fair Political Practices Commission

October 6, 1988

Michael F. Dean  
City Attorney  
City of Roseville  
311 Vernon Street  
Roseville, CA 95678

Re: Your Request For Advice  
Our File No. I-88-316

Dear Mr. Dean:

You have requested advice on behalf of several members of the City Council and Planning Commission of the City of Roseville about application of the Political Reform Act (the "Act")<sup>1/</sup> to their duties on the city council and planning commission. Because you have not asked a question about a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTIONS

Several members of the city council and planning commission own stock in Roseville Telephone Company. A member of the planning commission also is an employee of Roseville Telephone Company.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

1. Does regulation by the Public Utilities Commission (PUC) eliminate the effect of increased sales on Roseville Telephone's annualized gross revenues?
2. May councilmembers and planning commissioners who own stock in or work for Roseville Telephone Company participate in general plan and zoning decisions concerning property development that eventually will result in new consumers of telephone service and equipment?
3. If a majority of the city council or planning commission is disqualified from a decision, how should each body select a quorum?

#### CONCLUSIONS

1. PUC regulation does not eliminate the effect of increased sales on Roseville Telephone's annualized gross revenues.
2. Councilmembers and planning commissioners owning stock in or working for Roseville Telephone Company are disqualified from a decision that will have a foreseeable and material financial effect on Roseville Telephone Company. For example, a specific plan decision that will provide for development of residential units which in turn foreseeably will result in an increase in gross revenues to Roseville Telephone Company of \$150,000 or more in a fiscal year would be material. A councilmember or planning commissioner with an economic interest in Roseville Telephone Company would be disqualified from that decision.
3. Otherwise disqualified councilmembers or planning commissioners may participate in a decision to the extent their participation is legally required. Lot or another means of random selection may be used to choose a quorum from disqualified officials.

#### FACTS

Roseville has a five-member city council that appoints a seven-member planning commission. Both government bodies conduct hearings on general plan amendments, adoption of specific plans, rezoning, subdivision maps and use permits in Roseville. Soon the city council and the planning commission will be considering adoption of specific plan areas for the

Northwest Plan Specific Area and the North Central Roseville Specific Plan Area. The Northwest Plan provides for mainly residential development and some multi-family housing and neighborhood commercial development. The North Central Plan area will have major commercial development and some residential projects.

A majority of city council members and several planning commissioners own stock in Roseville Telephone Company ("Roseville Telephone"). One planning commissioner also is a Roseville Telephone employee.

Roseville Telephone is a private company that provides local and toll telephone service over about 83 square miles immediately northeast of Sacramento in Placer and Sacramento counties.<sup>3/</sup> Roseville Telephone would be the only provider of telephone service for the areas of Roseville that now are being developed for urban uses. Therefore, city council and planning commission decisions about general plan amendments, adoption of specific plans, zoning, and subdivision maps and use permits are expected to result in new users of telephone service and equipment provided by Roseville Telephone.

Roseville Telephone stock is traded locally. In calendar year 1987 Roseville Telephone had net tangible assets of about \$96,000,000; pretax income was \$20,168,000. Roseville Telephone also receives income from PUC-regulated services, and from activities not regulated by the PUC, such as telephone equipment sales through Roseville Telephone's RCC Communications Division.<sup>4/</sup>

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision that will have a

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<sup>3/</sup> This information is from the Roseville Telephone Company 1987 Annual Report.

<sup>4/</sup> On September 9, 1988 Brian Chang of the PUC explained that the PUC regulates Roseville Telephone to make sure rates cover the cost of providing new service and insure a reasonable rate of return to Roseville Telephone. The PUC, however, has no system which fixes Roseville Telephone's revenues for the fiscal year in a manner similar to the Gas Adjustment Clause for energy utilities.

foreseeable and material financial effect, different from the effect on the general public, on the official or on his or her immediate family or on the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

\* \* \*

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (a) and (c).

City councilmembers and planning commissioners are public officials. (Section 82048.) PUC regulation does not eliminate the effect of increased sales on Roseville Telephone's annualized gross revenues. Therefore, the councilmembers and planning commissioners are disqualified from participating in a decision that will have a foreseeable and material financial effect on an investment interest worth \$1,000 or more or on a source of income of \$250 or more received or promised to the official within 12 months before a decision.

Therefore, each councilmember and planning commissioner who owns stock worth \$1,000 in Roseville Telephone and the planning commissioner who works for Roseville Telephone would be disqualified from a decision that would have a foreseeable and material financial effect on Roseville Telephone. These officials should use the following guidelines to determine whether disqualification is required.

#### Foreseeability

The effect of a decision is foreseeable if there is a substantial likelihood it will occur. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed.)

New home owners and new businesses in Roseville will result in more Roseville Telephone customers. Revenue from new customers will have a foreseeable financial effect on Roseville Telephone. (Garcia Advice Letter, No. A-85-031, copy enclosed.) Therefore, councilmembers and planning commissioners should determine whether the financial effect of each development decision will be material.

### Materiality

For purposes of disqualification, the effect of a decision also must be material. Present Regulation 18702.2(d) and (f)<sup>5/</sup> (copy enclosed) provides guidelines for determining whether the effect of a decision on a business entity is material.

For example, for calendar year 1987 Roseville Telephone had net tangible assets of about \$96,000,000 and pretax income of \$20,618,000. If a company has net tangible assets of at least \$18,000,000 and pretax income for the past fiscal year of at least \$2,500,000, a public official should use subdivision (d) of present Regulation 18702.2 to determine whether an effect is material. (Regulation 18702.2(f).) A public official would be disqualified from a decision that would have the following effect on Roseville Telephone:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

Regulation 18702.2(d).

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<sup>5/</sup> On July 26, 1988 the Commission adopted amended Regulation 18702.2 (copy enclosed). The amended regulation should become effective by November 1988.



Therefore, any councilmember or planning commissioner who owns stock or who works for Roseville Telephone would be disqualified from participating in a decision that foreseeably would increase Roseville Telephone's gross revenues in a fiscal year by \$150,000. A decision that would result in Roseville Telephone's incurring expenses of \$50,000 or more in a fiscal year or increasing the value of assets or liabilities by \$150,000 or more also would be grounds for an official's disqualification.

A previous Commission advice letter also provides guidance. (See Garcia Advice Letter, supra.) In the Garcia letter, Pacific Telesis provided the Commission with facts about the average monthly telephone bill, installation fees, special charges and projected increases in gross revenues over a five-year build-out period that would result from a new 1000-unit subdivision. From these facts, the Commission concluded that a city council decision about a particular residential development would not have a material financial effect on Pacific Telesis.

Roseville councilmembers and planning commissioners may use similar information to evaluate the effects of decisions on Roseville Telephone. For example, assume the Northwest Specific Plan Area would permit 800 single-family homes, 3 apartment complexes and 15 businesses. By using figures supplied by Roseville Telephone about average monthly telephone bills, installation fees, special charges and projected increases in gross revenues, local officials could calculate the financial effect development of the Northwest Specific Plan Area would have on Roseville Telephone. An official would be disqualified from participating in a decision that would have a material financial effect on Roseville Telephone.

#### Legally Required Participation

If several councilmembers or planning commissioners are disqualified from participating in a decision, either body may lack a quorum. Section 87101 provides that an otherwise disqualified official may participate in a decision if his or her participation is "legally required." Regulation 18701(a)

Michael F. Dean  
October 6, 1988  
Page -7-

(copy enclosed) provides that legally required participation is appropriate under the following circumstances:

(a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

Regulation 18701(a).

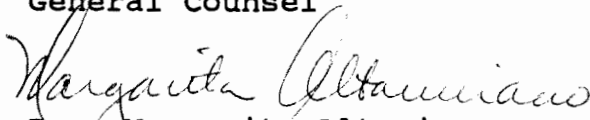
Therefore, an otherwise disqualified official may participate in a decision only if participation is required because there is no "alternative means of decision-making." (In re Brown (1978) 4 FPFC Ops. 19, 25, copy enclosed.) Because a governmental body cannot legally adopt decisions without a quorum, a disqualified councilmember or planning commissioner may participate to form a quorum. Participation, however, would be limited to voting only. A disqualified official could not participate in discussions. (Skousen Advice Letter, No. A-88-162, copy enclosed.)

The Commission has concluded that choosing by "lot or other means of random selection" is a method for forming a quorum from among disqualified officials. (See In re Hudson (1978) 4 FPFC Ops. 13, 18, copy enclosed.) Consequently, disqualified councilmembers or planning commissioners may draw lots to determine who shall participate to form a quorum.

I hope this letter answers your questions satisfactorily. Please call me at (916) 322-5901 if you have any questions about this letter.

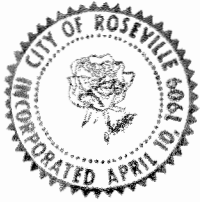
Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:aa

Enclosures



# City of Roseville

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City Attorney

MFD/mlc

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cc: Mayor and Members of the City Council  
Commissioner Kinder  
City Manager  
Planning Director

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**ROSEVILLE  
TELEPHONE  
COMPANY**  
**•1987•**  
**ANNUAL REPORT**

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# MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (CONTINUED)

## REGULATORY PROCEEDINGS

Recent and future regulatory proceedings and related matters may have a significant impact on the Company's future operations and financial condition.

The P.U.C. staff requested information concerning the Company's projected results for 1988 to determine the Company's anticipated rate of return from intrastate operations. The Company submitted the information in April 1988 and anticipates that the P.U.C. staff will complete their review in mid-1988. If it is determined that the Company's rate of return exceeds prescribed levels, the P.U.C. will make recommendations regarding the future actions the Company should take, the effect of which may be a reduction in future revenues derived from intrastate operations.

The F.C.C. has adopted a significant revision of the Uniform System of Accounts utilized by all telephone companies effective January 1, 1988. The new system has caused the Company to incur implementation costs and will result in the expensing of certain costs that previously have been capitalized, as well as the allocation of additional costs to non-regulated activities. The P.U.C. is considering various matters including, among other things, the subsidization by regulated entities of nonregulated activities, full-utilization of plant and equipment and the impact thereof on rate-related matters, potential changes to the jurisdictional separations process which could impact future settlements, the proper level of expense for ratemaking purposes as effected by the Tax Reform Act of 1986, and accounting for pension costs. The eventual impact on the Company of such actions and matters cannot be determined with certainty.

# **MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (CONTINUED)**

## **LIQUIDITY AND CAPITAL RESOURCES**

The Company in 1987 improved its already strong financial position while continuing to make significant investments in plant and equipment. Approximately \$10.2 million was invested in plant and equipment in 1987, a 38% increase over the previous fiscal year, financed entirely by internally generated funds.

Net cash provided from operating activities amounted to \$17.1 million and \$15.0 million in 1987 and 1986, respectively. A significant portion of the increase was attributable to the \$2.1 million increase in net income in 1987. Approximately \$3.5 million and \$3.4 million of the cash flows from operations were used to pay common stock dividends in 1987 and 1986, respectively.

The Company's cash and temporary cash investment position increased by \$2.4 million to \$12.9 million in 1987. In addition, the Company further reduced its long-time indebtedness with principal payments totaling \$540,000 and, as a result, long-term debt (including current maturities) at year-end 1987 was approximately 11.7% of total capitalization, compared to 13.7% at year-end 1986.

The most significant use of funds in 1988 will be for budgeted capital expenditures of approximately \$21 million to be utilized for building additions, central office equipment, and outside plant. It is anticipated that the Company's need for capital will be met from both current cash reserves and from positive net cash flows generated from operations in 1988. The Company does not presently anticipate that it will incur additional indebtedness or commence any securities offerings in 1988.

## **INFLATION**

While the Company is not immune from increased costs brought on by inflation and regulatory requirements, the impact of such items on the Company's operations and financial condition depends partly on results of future rate cases and the extent to which increased rates can be translated into improved earnings.

## **ACCOUNTING FOR INCOME TAXES**

In December, 1987, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 96 (SFAS 96), "Accounting for Income Taxes". SFAS 96, which is effective in 1989, replaces the operating orientation of the current income tax accounting standard with an asset and liability approach. Management expects that SFAS 96 will not have a material impact on the Company's net income or financial position since regulatory authorities and the Internal Revenue Code require the benefit of any excess deferred tax reserve related to accelerated depreciation to be normalized, that is, deferred and amortized over the remaining lives of the depreciable assets giving rise to the excess. Amortization of such excess reserve was adopted by the P.U.C. for rate-making treatment during 1987. Accordingly, the 1987 results of operations include such amortization.